

CR-12-00723-EJD

E-FILING

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FILED
2013 APR 24 P 3:38
CLERK, U.S. DISTRICT COURT
N.D. CALIFORNIA
SAN JOSE

THE UNITED STATES OF AMERICA

VS.

Jose Farias Barajas and Victor Manuel Rodriguez**SUPERSEDING INDICTMENT**SEE ATTACHMENT*A true bill.*ForepersonFiled in open court this 24 TH day of APRIL

A.D. 2013

Paul S. Aenwol

UNITED STATES MAGISTRATE JUDGE

Bail. \$ No process.

C

ATTACHMENT TO INDICTMENT COVER SHEET

- Count 1 18 U.S.C. § 1962(d) — Racketeering Conspiracy
- Count 2 18 U.S.C. § 1959(a)(5) - Conspiracy to Commit Murder in Aid of Racketeering
- Count 3 18 U.S.C. § 1959(a)(6) - Conspiracy to Commit Assault with a Dangerous
Weapon in Aid of Racketeering
- Count 4 18 U.S.C. § 1959(a)(1) - Murder in Aid of Racketeering
- Count 5 18 U.S.C. § 924(c)(1)(A)(I) - Possession of a Firearm During and in Relation to a
Crime of Violence
- Count 6 18 U.S.C. § 924(j)(1) - Use/Possession of a Firearm in Furtherance of a Crime of
Violence Resulting in Murder
- Counts 7-9 21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Distribute and Possess with Intent to
Distribute, and Distribution and Possession with Intent to Distribute, 5 Grams or
More of Methamphetamine;
- Count 10 18 U.S.C. § 924(c)(1)(A)(I) - Possession of a Firearm During and in Relation
to and in Furtherance of a Drug Trafficking Crime
- Counts 11-12 18 U.S.C. § 922(g) - Possession of a Firearm By A Prohibited Person

MELINDA HAAG (CABN 132612)
United States Attorney

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2013 APR 24 P 3:38

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. - SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

v.

JOSE FARIAS BARAJAS,
a/k/a "Oso," and
VICTOR MANUEL RODRIGUEZ,
a/k/a "Silencer,"

Defendants.

No. CR 12-00723 EJD

VIOLATIONS: 18 U.S.C. § 1962(d) –
Racketeering Conspiracy; 18 U.S.C. § 1959
– Violent Crime in Aid of Racketeering; 18
U.S.C. § 924(j) – Use of Firearm Causing
Murder; 21 U.S.C. § 846 – Conspiracy to
Possess with Intent to Distribute and
Distribute Methamphetamine; 21 U.S.C. §
841(a)(1) – Possession With Intent to
Distribute and Distribution of
Methamphetamine; 18 U.S.C. § 924(c) –
Use/Possession of Firearm in Furtherance of
Crime of Violence and Drug Trafficking
Crime; 18 U.S.C. §§ 922(g)(3) & (5) –
Possession of a Firearm by Prohibited
Person; 18 U.S.C. § 2 – Aiding and
Abetting

(SAN JOSE VENUE)

SUPERSEDING INDICTMENT

1 The Grand Jury charges:

2 Introductory Allegations

3 1. The Mexican Mafia, also known as "*La Eme*," is a prison gang that was formed in
4 the late 1950s in the California State prison system. It was formed by Hispanic inmates for
5 protection against other prison gangs as well as to engage in illegal activities for profit. The
6 Mexican Mafia soon became dominated by Mexican and Mexican-American inmates from
7 Southern California, and Hispanic inmates from Northern California perceived that they were
8 marginalized under the dominion of the Mexican Mafia. As a result, in the late 1960s, Hispanic
9 inmates with roots in Northern California banded together and formed what became *Nuestra*
10 *Familia* – Spanish for "Our Family" and also known by the letters "*NF*" – in order to protect
11 themselves and advance their own interests.

12 2. By the 1970s, *Nuestra Familia* rivaled the power of the Mexican Mafia and other
13 prison gangs in California, and the competition between members and associates of *Nuestra*
14 *Familia* and the Mexican Mafia resulted in violent and often fatal encounters. Similarly, outside
15 of prison, the members and associates of *Nuestra Familia* and the Mexican Mafia competed with
16 each other to control such profitable criminal activities as narcotics trafficking, extortion, and
17 robbery. This competition between the two rivals led to murder, attempted murder, and other
18 acts of violence.

19 3. The Mexican Mafia is composed of relatively few full members, who are known
20 as "brothers," "carnales," "dons," or "big homies," and who control the gang. Below the rank of
21 "brother," are Mexican Mafia "soldiers" or "associates." Despite being imprisoned and being
22 closely scrutinized by prison officials, Mexican Mafia brothers still manage to convey their
23 orders to Mexican Mafia members and associates throughout the prison system and outside of
24 prison through a variety of means, including secret notes, called "kites" or "filters," coded letters,
25 and messages conveyed by complicit visitors. When Mexican Mafia members or associates
26 complete their sentences and rejoin their communities, they remain loyal to the Mexican Mafia
27 and work to further the goals of the Mexican Mafia outside the prison environment. One of the
28 significant goals of the Mexican Mafia is to control and profit from narcotics trafficking.

1 4. The Mexican Mafia exerts control over and directs the activities of others, notably
2 members of various *Sureño* street gangs. *Sureños* are gang members who pledge their allegiance
3 and loyalty to the Mexican Mafia, and who have been instructed on the rules, rituals, and
4 obligations of the Mexican Mafia. *Norteños*, on the other hand, are gang members who are loyal
5 to *Nuestra Familia*. The Mexican Mafia is able to assert control and influence over *Sureño* gang
6 members outside the penal system because: (1) the gang members do not want their incarcerated
7 members to be assaulted, and (2) the gang members want the protection provided by the Mexican
8 Mafia if they ever become incarcerated. *Sureños*, which is Spanish for "Southerner," dominate
9 street gang activity in Southern California and have developed a significant presence in Northern
10 California as well, although they remain outnumbered by *Norteños* in Northern California.

11 5. *Sureños* commit crimes such as narcotics trafficking, robbery, and murder to
12 benefit themselves and the Mexican Mafia. New Mexican Mafia brothers are pulled from the
13 ranks of *Sureños* who have proven their loyalty to the Mexican Mafia by committing crimes for
14 the gang's benefit. Within the ranks of *Sureños*, gang members earn promotion and prestige by
15 proving themselves through the commission of criminal activities benefitting the gang and/or by
16 spending time in jail or prison. *Sureños* typically engage in street-level drug dealing as well as
17 crimes of violence, including murder and robbery. *Sureños* also follow the rules of the Mexican
18 Mafia and are "disciplined" for failing to follow the rules or otherwise failing to achieve the
19 gang's goals. The gang member who is being disciplined is typically beaten by three fellow gang
20 members while they count to 13. When the discipline is completed, the issue is resolved and put
21 behind them.

22 6. *Sureños* are organized into smaller gangs based on local neighborhoods or
23 "hoods." Each *Sureño* gang has a name and its members meet and work together to carry out
24 their illegal activities for their own individual benefit, the benefit of the particular *Sureño* gang,
25 the benefit of *Sureños* generally, and the benefit of the Mexican Mafia. Because *Sureños* are
26 outnumbered by *Norteños* in Northern California, sometimes smaller *Sureño* gangs combine
27 together for protection against rival *Norteño* gangs. In addition, a member of one *Sureño* gang
28 could coordinate his illegal activity, including drug trafficking, with a member or members of a

1 different *Sureño* gang. *Sureño* gang members often socialize with *Sureño* gang members from
 2 other neighborhoods, not just with other *Sureños* in their own particular gang.

3 7. The Mexican Mafia and its affiliated gangs (*Sureños*) have been and continue to
 4 be engaged in a fierce and violent gang war with the *Nuestra Familia* and the *Nuestra Familia's*
 5 affiliated gangs (*Norteños*). Within the prison system, this rivalry manifests itself in beatings and
 6 stabbings, which often result in death. Outside the prison system, the two sides, *Norteños* and
 7 *Sureños*, fight for control of territory in which to conduct narcotics trafficking and other crimes,
 8 as well as to recruit and influence non-gang members. In addition to fighting for control over
 9 remunerative illegal activities and using violence and terror for the purpose of enriching
 10 themselves, the two sides also engage in violence simply to assert their gang identities,
 11 to claim or protect their territory, to challenge or respond to a challenge, to retaliate against a
 12 rival gang or member, to gain notoriety and show their superiority over others and to send a
 13 message to others that they are strong, powerful and not to be provoked.

14 8. *Sureño* gangs want and need to have a reputation for being strong and powerful.
 15 They also need to increase their membership to survive and continue functioning as an
 16 organization on the streets. If a *Sureño* gang has a reputation for being weak, other gangs will
 17 challenge and assault its members, and will also attempt to take over its territory. This will cause
 18 the gang to lose membership and eventually dissolve. If a *Sureño* gang has a large membership
 19 and a reputation for being strong, powerful and dominant, rival gangs will think twice before
 20 they challenge it and victims/witnesses will think twice about assisting authorities with any
 21 prosecution attempt against it. This will allow the gang to grow in strength, thrive in its criminal
 22 activity, and rule its territory. A member or associate of a *Sureño* gang is expected to "hunt" —
 23 that is, seek out and beat, stab, and shoot — *Norteños*. Similarly, a member or associate of a
 24 *Sureño* gang is expected to confront and attack any suspected *Norteño* that he encounters.
 25 Because of this on-going war, many innocent individuals have been hurt or killed as a result of
 26 mistaken identity or for being in the wrong place at the wrong time.

27 9. *Sureños* identify themselves with the color blue, the number "13" and/or the
 28 Roman numeral "XIII," "X3" and "trece," which is Spanish for thirteen. The number "13"

1 corresponds with the letter "M," which is the thirteenth letter of the alphabet; the letter "M," in
2 turn, is a symbol of the Mexican Mafia. As with the number "13" and the Spanish word
3 "*Sureño*," "Sur" is commonly, but not exclusively, displayed by *Sureño* criminal street gang
4 members in tattoos, graffiti, drawings, hand signs, and on clothing, as a way of displaying their
5 affiliation, loyalty, and commitment to the gang.

6 10. *Norteños* identify themselves with the color red, the number "14" and/or the
7 Roman numeral "XIV." The number "14" corresponds with the letter "N," which is the
8 fourteenth letter of the alphabet; the letter "N," in turn, is a symbol of the *Nuestra Familia*. As
9 with the number "14" and the Spanish word "*Norteño*," "Norte" is commonly, but not
10 exclusively, displayed by *Norteño* criminal street gang members in tattoos, graffiti, drawings,
11 hand signs, and on clothing, as a way of displaying their affiliation, loyalty, and commitment to
12 the gang.

13 The Colonias/VTG Gang

14 11. Varrio Colonias Trece ("Colonias") is the name of a *Sureño* gang based in San
15 Jose, California. It is sometimes referred to as "Colonias" or "VCT." Varrio Tami Lee
16 Gangsters ("VTG") is the name of another *Sureño* gang based in San Jose, California. It is
17 sometimes referred to as "Tami Lee" or "VTG." Colonias and VTG have existed as *Sureño*
18 street gangs in San Jose for over 10 years. The gangs are located in east San Jose, and their
19 respective territories have historically abutted and overlapped with each other. Their collective
20 territory covers the area south of Story Road, north of Tully Road, east of McLaughlin Avenue
21 and west of Highway 101. For at least the last five years, Colonias and VTG have joined forces
22 and essentially operate as a single, unified association-in-fact enterprise, although they each
23 retain their separate historical gang names, which are referred to in graffiti and tattoos.
24 Colonias/VTG Gang members coordinate their activities and engage in violence together to
25 defend their collective territory against rival *Norteño* gangs.

26 12. The Colonias/VTG Gang conducts meetings that are open only to Colonias and
27 VTG gang members. The Colonias/VTG Gang meetings occur approximately once a month,
28 occur at different locations and with very short advance notice. At the meetings, members must

1 pay dues and are checked off on a list of members. If a member does not have enough money to
 2 pay his dues, he is subject to discipline. The dues are used to buy firearms for the gang. During
 3 the meetings, current gang activities and priorities are discussed, such as defending the territory
 4 against encroachment by *Norteños* and the need for younger members and associates to “put in
 5 work.” “Putting in work,” most often refers to engaging in violence against *Norteños* and selling
 6 drugs. It can more generally be referred to doing anything on behalf of the gang. To facilitate
 7 “putting in work,” firearms are passed among gang members who are expected to use the guns to
 8 carry out the gang’s activities, typically attacking *Norteños*, and then passed on to a fellow gang
 9 member so he can do the same. Sometimes new members are “jumped in” at meetings, which is
 10 an initiation ritual that involves the new member being assaulted by three gang members for a
 11 count of 13 seconds.

12 The Racketeering Enterprise

13 13. For all time periods relevant to this Superseding Indictment, the Colonias/VTG
 14 Gang, including its leadership, members, and non-member associates, constituted an “enterprise”
 15 as defined in Title 18, United States Code, Section 1961(4), that is, a group of individuals
 16 associated in fact. The enterprise constituted an ongoing organization whose members
 17 functioned as a continuing unit for a common purpose of achieving the objectives of the
 18 enterprise. The enterprise was engaged in, and its activities affected, interstate and foreign
 19 commerce.

20 Purposes of the Enterprise

21 14. The purposes of the Colonias/VTG Gang enterprise included the following:
 22 a. Preserving and protecting the power, territory, reputation, and profits of
 23 the enterprise through the use of intimidation, violence, threats of violence, assaults, and murder;
 24 b. Promoting and enhancing the enterprise and the activities of its members
 25 and associates, including, but not limited to, murder, attempted murder, narcotics trafficking,
 26 theft of vehicles, robberies and other criminal activities;
 27 c. Keeping victims, potential victims, and community members in fear of the
 28 enterprise and its members and associates through violence and threats of violence;

1 d. Protecting the enterprise's members and associates who committed
 2 crimes by hindering, obstructing and preventing law enforcement officers from identifying the
 3 offenders, apprehending the offenders and successfully prosecuting and punishing the offenders;

4 e. Providing assistance to and working with other *Sureño* gangs against their
 5 common enemies, such as members of *Norteño* gangs.

6 The Defendants

7 15. The defendant, JOSE FARIAS BARAJAS, a/k/a "Oso," which is Spanish for
 8 "bear," has been a member of the Colonias gang since at least in or about 2010. BARAJAS has
 9 the word "Colonias" tattooed on his chest and several other tattoos that are gang related.

10 16. The defendant, VICTOR MANUEL RODRIGUEZ, a/k/a "Silencer," has been a
 11 member of the VTG gang since at least in or about 2009. RODRIGUEZ has a tattoo of "VTG"
 12 on the back of his head and on his stomach. On the front of his arms he has the tattoos "1" (right
 13 arm) and "3" (left arm). On his left hand he has three dots and on his left elbow he has three
 14 dots. He has several other tattoos that are gang related.

15 17. Among other activities taken in furtherance of the Colonias/VTG Gang, on or
 16 about August 13, 2012, in the vicinity of Denair Avenue and Letitia Street in San Jose,
 17 California, VICTOR MANUEL RODRIGUEZ, aided by JOSE FARIAS BARAJAS, who served
 18 as the driver, shot at an individual who they believed was a rival gang member, hitting the
 19 individual and killing him.

20 18. The defendants, who are members of the Colonias/VTG Gang, acted individually,
 21 with each other, and also with other members and non-members of Colonias/VTG Gang in the
 22 commission of racketeering activities and other criminal conduct.

23 COUNT ONE: (18 U.S.C. § 1962(d) — Racketeering Conspiracy)

24 The Racketeering Conspiracy

25 19. Paragraphs 1 through 18 of this Superseding Indictment are realleged and
 26 incorporated by reference as though fully set forth herein.

27 20. Beginning on a date unknown to the Grand Jury but since at least 2009, and
 28 continuing up through and including the present, in the Northern District of California and

1 elsewhere, the defendants,

2 JOSE FARIAS BARAJAS, a/k/a "Oso," and

3 VICTOR MANUEL RODRIGUEZ, a/k/a "Silencer,"

4 together with others known and unknown, each being a person employed by and associated with
 5 the Colonias/VTG Gang, an enterprise engaged in, and the activities of which affected, interstate
 6 and foreign commerce, unlawfully, knowingly, and intentionally conspired to violate Title 18,
 7 United States Code, Section 1962(c), that is to conduct and participate, directly and indirectly, in
 8 the conduct of the affairs of the Colonias/VTG Gang enterprise through a pattern of racketeering
 9 activity, as defined in Title 18, United States Code, Sections 1961(1) and (5), which pattern of
 10 racketeering activity consisted of:

11 a. multiple acts involving murder, in violation of California Penal Code §§
 12 187, 188, 189, 182, 21a, 664, 653f, and 422;

13 b. multiple acts involving the distribution of controlled substances, in
 14 violation of 21 U.S.C. §§ 841(a)(1) and 846; and

15 c. multiple acts indictable under 18 U.S.C. §§ 1512 and 1513.

16 21. It was part of the conspiracy that each defendant agreed that a conspirator would
 17 commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

18 Means and Methods of the Conspiracy

19 22. It was part of the means and methods of the conspiracy that the defendants and
 20 other members and associates of the Colonias/VTG Gang, discussed with other members and
 21 associates of the Colonias/VTG Gang, among other things, the membership, rules and
 22 enforcement of the rules of the Colonias/VTG Gang; the status of Colonias/VTG Gang members
 23 and associates who were arrested or incarcerated; the discipline of Colonias/VTG Gang
 24 members; Colonias/VTG Gang members' encounters with law enforcement; the identities of
 25 individuals suspected of cooperating with law enforcement and the proposed actions to be taken
 26 against them; and plans and agreements regarding the commission of future crimes, including
 27 murder, narcotics distribution, illegal possession of firearms, and assault, as well as ways to
 28 conceal these crimes.

1 23. It was further part of the means and methods of the conspiracy that the defendants
2 and other members and associates of the Colonias/VTG Gang agreed to purchase, possess,
3 maintain, use, and circulate a collection of firearms for use in criminal activity by the members
4 and associates of the Colonias/VTG Gang.

5 24. It was further part of the means and methods of the conspiracy that the defendants
6 and other members and associates of the Colonias/VTG Gang agreed that acts of violence,
7 including murder, attempted murder, and assault, would be committed by members and
8 associates of the Colonias/VTG Gang against rival gang members and others when it furthered
9 the status and goals of the enterprise. Members of the Colonias/VTG Gang also used violence to
10 impose discipline within the Colonias/VTG Gang.

11 25. It was further part of the means and methods of the conspiracy that the defendants
12 and other members and associates of the Colonias/VTG Gang agreed to distribute narcotics and
13 commit other crimes, and to conceal their criminal activities by obstructing justice, threatening
14 and intimidating witnesses, and other means.

15 All in violation of Title 18, United States Code, Section 1962(d).

16 COUNT TWO: (18 U.S.C. § 1959(a)(5) — Conspiracy to Commit Murder in Aid of
17 Racketeering)

18 26. Paragraphs 1 through 18 and 22 through 25 of this Superseding Indictment are
19 realleged and incorporated by reference as though fully set forth herein.

20 27. At all times relevant to this Superseding Indictment, the Colonias/VTG Gang
21 constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a
22 group of individuals associated in fact that was engaged in, and the activities of which affected,
23 interstate and foreign commerce. The enterprise constituted an ongoing organization whose
24 members functioned as a continuing unit for a common purpose of achieving the objectives of
25 the enterprise.

26 28. At all times relevant to this Superseding Indictment, the Colonias/VTG Gang, the
27 above-described enterprise, through its members and associates, engaged in racketeering activity,
28 as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, multiple

1 acts involving murder, in violation of California Penal Code §§ 187, 188, 189, 182, 21a, 664,
 2 653f, and 422; multiple acts involving the distribution of a controlled substance, in violation of
 3 21 U.S.C. §§ 841(a)(1) and 846; and multiple acts indictable under 18 U.S.C. §§ 1512 and 1513.

4 29. Beginning on a date unknown to the Grand Jury but since at least 2009, and
 5 continuing up through and including the present, in the Northern District of California and
 6 elsewhere, for the purpose of gaining entrance to and maintaining and increasing position in the
 7 Colonias/VTG Gang, an enterprise engaged in racketeering activity, the defendants,

8 JOSE FARIAS BARAJAS, a/k/a "Oso," and

9 VICTOR MANUEL RODRIGUEZ, a/k/a "Silencer,"

10 together with others known and unknown, unlawfully, knowingly, and intentionally combined,
 11 conspired, confederated, and agreed together and with each other to commit murder, in violation
 12 of California Penal Code Sections 187, 188, and 189, to wit, the defendants agreed together and
 13 with each other to kill actual and suspected members of rival gangs, individuals suspected of
 14 cooperating with law enforcement, and individuals who defied the will of the Colonias/VTG
 15 Gang.

16 All in violation of Title 18, United States Code, Section 1959(a)(5).

17 COUNT THREE: (18 U.S.C. § 1959(a)(6) — Conspiracy to Commit Assault with a
 18 Dangerous Weapon in Aid of Racketeering)

19 30. Paragraphs 1 through 18, 22 through 25, and 27 through 28 of this Superseding
 20 Indictment are realleged and incorporated by reference as though fully set forth herein.

21 31. Beginning on a date unknown to the Grand Jury but since at least 2009, and
 22 continuing up through and including the present, in the Northern District of California and
 23 elsewhere, for the purpose of gaining entrance to and maintaining and increasing position in the
 24 Colonias/VTG Gang, an enterprise engaged in racketeering activity, the defendants,

25 JOSE FARIAS BARAJAS, a/k/a "Oso," and

26 VICTOR MANUEL RODRIGUEZ, a/k/a "Silencer,"

27 together with others known and unknown, unlawfully, knowingly, and intentionally combined,
 28 conspired, confederated, and agreed together and with each other to commit assault with a

dangerous weapon, in violation of California Penal Code Section 245(a)(1), to wit, the defendants agreed together and with each other to assault, with guns and other dangerous weapons, actual and suspected members of rival gangs, individuals suspected of cooperating with law enforcement, and individuals who defied the will of the Colonias/VTG Gang.

All in violation of Title 18, United States Code, Section 1959(a)(6).

COUNT FOUR: (18 U.S.C. §§ 1959(a)(1) and 2 — Murder in Aid of Racketeering of Victim-1)

32. Paragraphs 1 through 18, 22 through 25, and 27 through 28 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

33. On or about August 13, 2012, in the Northern District of California, for the purpose of maintaining and increasing position in the Colonias/VTG Gang, an enterprise engaged in racketeering activity, the defendants,

JOSE FARIAS BARAJAS, a/k/a “Oso,” and

VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

unlawfully, willfully, and intentionally murdered Victim-1, in violation of California Penal Code Sections 187, 188, and 189.

All in violation of Title 18, United States Code, Sections 1959(a)(1) and 2.

COUNT FIVE: (18 U.S.C. §§ 924(c)(1)(A) and 2 — Use/Possession of Firearm in Furtherance of Crime of Violence)

34. Beginning on a date unknown to the Grand Jury but since at least 2009, and continuing up through and including October 3, 2012, in the Northern District of California and elsewhere, the defendants,

JOSE FARIAS BARAJAS, a/k/a “Oso,” and

VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

each aided and abetted by the other, together with others known and unknown, unlawfully, willfully, and knowingly used and carried a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, namely, the Colonias/VTG Gang racketeering conspiracy charged in Count One of this Superseding Indictment, the

1 conspiracy to commit murder in aid of racketeering charged in Count Two of this Superseding
 2 Indictment, the conspiracy to commit assault with a dangerous weapon in aid of racketeering
 3 charged in Count Three of this Superseding Indictment, and the murder in aid of racketeering of
 4 Victim-1 charged in Count Four of this Superseding Indictment. and possessed, brandished, and
 5 discharged a firearm in furtherance of the offenses charged in Count One, Count Two, Count
 6 Three, and Count Four of this Superseding Indictment.

7 All in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.

8 COUNT SIX: (18 U.S.C. §§ 924(j)(1) and 2 — Use/Possession of Firearm in Furtherance
 9 of Crime of Violence Resulting in Murder)

10 35. On or about August 13, 2012, in the Northern District of California, the
 11 defendants,

12 JOSE FARIAS BARAJAS, a/k/a “Oso,” and

13 VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

14 each aided and abetted by the other, unlawfully, willfully, and knowingly used and carried a
 15 firearm, during and in relation to a crime of violence for which they may be prosecuted in a court
 16 of the United States, namely, the murder in aid of racketeering of Victim-1 charged in Count
 17 Four of this Superseding Indictment, and possessed a firearm in furtherance of such crime, and in
 18 the course of that crime caused the death of a person through the use of a firearm, which killing
 19 was murder as defined in Title 18, United States Code, Section 1111(a).

20 All in violation of Title 18, United States Code, Sections 924(j)(1) and 2.

21 COUNT SEVEN: (21 U.S.C. § 846 – Conspiracy to Possess with Intent to Distribute and
 22 Distribute Methamphetamine)

23 36. Beginning on a date unknown to the Grand Jury, but since at least June 2012, and
 24 continuing up through and including the present, in the Northern District of California, and
 25 elsewhere, the defendants,

26 JOSE FARIAS BARAJAS, a/k/a “Oso,” and

27 VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

28 unlawfully, knowingly, and intentionally conspired to distribute and possess with intent to

1 distribute a Schedule II controlled substance, specifically, 5 grams or more of actual
2 methamphetamine, its salts, isomers, and salts of its isomers.

3 All in violation of Title 21, United States Code, Sections 846, 841(a)(1), and
4 841(b)(1)(B)(viii).

5 COUNT EIGHT: (21 U.S.C. § 841(a)(1) – Possession With Intent to Distribute and
6 Distribution of Methamphetamine)

7 37. On or about September 17, 2012, in the Northern District of California, the
8 defendants,

9 JOSE FARIAS BARAJAS, a/k/a “Oso,” and

10 VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

11 each aided and abetted by the other, unlawfully, knowingly, and intentionally distributed and
12 possessed with intent to distribute a Schedule II controlled substance, specifically, 5 grams or
13 more of actual methamphetamine, its salts, isomers, and salts of its isomers.

14 All in violation of Title 21, United States Code, Sections 841(a)(1) and
15 841(b)(1)(B)(viii), and Title 18, United States Code, Section 2.

16 COUNT NINE: (21 U.S.C. § 841(a)(1) – Possession With Intent to Distribute and
17 Distribution of Methamphetamine)

18 38. On or about October 3, 2012, in the Northern District of California, the
19 defendants,

20 JOSE FARIAS BARAJAS, a/k/a “Oso,” and

21 VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

22 each aided and abetted by the other, unlawfully, knowingly, and intentionally distributed and
23 possessed with intent to distribute a Schedule II controlled substance, specifically, 5 grams or
24 more of actual methamphetamine, its salts, isomers, and salts of its isomers.

25 All in violation of Title 21, United States Code, Sections 841(a)(1) and
26 841(b)(1)(B)(viii), and Title 18, United States Code, Section 2.

27 //

28 //

COUNT TEN: (18 U.S.C. §§ 924(c)(1)(A) and 2 — Use/Possession of Firearm in
Furtherance of Drug Trafficking Crime)

39. Beginning on a date unknown to the Grand Jury, but since at least June 2012, and continuing up through and including October 3, 2012, in the Northern District of California, the defendants,

JOSE FARIAS BARAJAS, a/k/a “Oso,” and

VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

each aided and abetted by the other, unlawfully, willfully, and knowingly used and carried a firearm during and in relation to a drug trafficking crime, namely, the conspiracy to distribute and possess with intent to distribute methamphetamine charged in Count Seven of this Superseding Indictment, and the distribution and possession with intent to distribute methamphetamine charged in Count Nine of this Superseding Indictment, and possessed a firearm in furtherance of the offenses charged in Count Seven, Count Eight and Count Nine of this Superseding Indictment.

All in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.

COUNT ELEVEN: (18 U.S.C. §§ 922(g)(3) & (5) — Possession of a Firearm by a Prohibited Person)

40. On or about August 13, 2012, in the Northern District of California, the defendant,

VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

was (a) an unlawful user of and addicted to a controlled substance, and (b) an alien who was illegally and unlawfully in the United States, unlawfully and knowingly possessed a firearm, described as a Rossi .38 Special revolver, in and affecting interstate and foreign commerce.

All in violation of Title 18, United States Code, Sections 922(g)(3) & (5).

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1 COUNT TWELVE: (18 U.S.C. §§ 922(g)(3) & (5) — Possession of a Firearm by a Prohibited
2 Person)

3 41. On or about October 3, 2012, in the Northern District of California, the defendant,
4 VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”
5 was (a) an unlawful user of and addicted to a controlled substance, and (b) an alien who was
6 illegally and unlawfully in the United States, unlawfully and knowingly possessed a firearm,
7 described as a 9mm Taurus semi-automatic pistol, model PT111 Millennium Pro, with serial
8 number TYA 53454, in and affecting interstate and foreign commerce.

9 All in violation of Title 18, United States Code, Section 922(g)(3) & (5).

10 NOTICE OF SPECIAL SENTENCING FACTORS REGARDING COUNT ONE

11 Number 1: Conspiracy to Commit Murder

12 42. Beginning on a date unknown to the Grand Jury but since at least 2009, and
13 continuing up through and including the present, in the Northern District of California, the
14 defendants,

15 JOSE FARIAS BARAJAS, a/k/a “Oso,” and

16 VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

17 together with others known and unknown, unlawfully, knowingly, and intentionally did conspire
18 to commit murder, in violation of California Penal Code Sections 187, 188, 189, and 182, to wit,
19 the defendants agreed together and with each other to kill, with malice aforethought, actual and
20 suspected members of rival gangs, individuals suspected of cooperating with law enforcement,
21 and individuals who defied the will of the Colonias/VTG Gang.

22 Number 2: Murder of Victim-1

23 43. On or about August 13, 2012, in the Northern District of California, the
24 defendants,

25 JOSE FARIAS BARAJAS, a/k/a “Oso,” and

26 VICTOR MANUEL RODRIGUEZ, a/k/a “Silencer,”

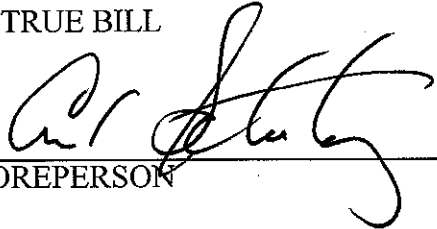
27 //

28 //

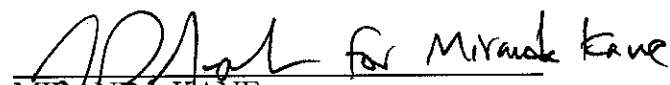
1 unlawfully, willfully, and intentionally, did kill, with malice aforethought, Victim-1, in violation
2 of California Penal Code Sections 187, 188, and 189.


3
4 DATED: April 24, 2013

A TRUE BILL

5
6 
FOREPERSON

7 MELINDA HAAG
8 United States Attorney

9
10 
11 MIRANDA KANE
Chief, Criminal Division

12
13 (Approved as to form: 
14 STEPHEN MEYER
15 DANIEL KALEBA
Assistant United States Attorneys

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☒ SUPERSEDING
OFFENSE CHARGED

See attachment

- ☐
- Petty
-
- ☐
- Minor
-
- ☐
- Misdemeanor
-
- ☒
- Felony

PENALTY:

See attachment.

CR 12 00723
 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA
DEFENDANT - U.S.

Jose Farias Barajas

DISTRICT COURT NUMBER

DEFENDANT**IS NOT IN CUSTODY**

- 1)
- ☐
- Has not been arrested, pending outcome this proceeding.
-
- If not detained give date any prior summons was served on above charges
-
- 2)
- ☐
- Is a Fugitive
-
- 3)
- ☐
- Is on Bail or Release from (show District)

IS IN CUSTODY

- 4)
- ☒
- On this charge
-
- 5)
- ☐
- On another conviction
-
- 6)
- ☐
- Awaiting trial on other charges }
- ☒
- Fed'l
- ☐
- State
-
- If answer to (6) is "Yes", show name of institution

 Has detainer been filed? ☐ Yes ☐ No } If "Yes" give date filed
DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY☒ This report amends AO 257 previously submitted**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**☐ SUMMONS ☒ NO PROCESS*☐ WARRANT Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____

Δ1

ATTACHMENT TO PENALTY SHEET

Count 1 18 U.S.C. § 1962(d) — Racketeering Conspiracy

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum imprisonment of life |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Count 2 18 U.S.C. § 1959(a)(5) - Conspiracy to Commit Murder in Aid of Racketeering

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum imprisonment of 10 years |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 3 years |
| 4) Special Assessment: | \$100 |

Count 3 18 U.S.C. § 1959(a)(6) - Conspiracy to Commit Assault with a Dangerous Weapon in Aid of Racketeering

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum imprisonment of 3 years |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 3 years |
| 4) Special Assessment: | \$100 |

Count 4 18 U.S.C. § 1959(a)(1) - Murder in Aid of Racketeering

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum life imprisonment
Mandatory minimum life imprisonment |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Count 5 18 U.S.C. § 924(c)(1)(A)(I) - Possession of a Firearm During and in Relation to a Crime of Violence

- | | |
|------------------------|---|
| 1) Imprisonment: | Mandatory minimum 10 years imprisonment (as charged)
consecutive to any other term of imprisonment
Maximum life imprisonment |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the
gross pecuniary gain to the defendant; or (c) twice the gross
pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Count 6 18 U.S.C. § 924(j)(1) - Use/Possession of a Firearm in Furtherance of a Crime of Violence Resulting in Murder

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum life imprisonment |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the
gross pecuniary gain to the defendant; or (c) twice the gross
pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Counts 7-9 21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Distribute and Possess with Intent to Distribute, and Distribution and Possession with Intent to Distribute, 5 Grams or More of Methamphetamine;

- | | |
|------------------------|---|
| 1) Imprisonment: | Mandatory minimum 5 years imprisonment
Maximum 40 years imprisonment |
| 2) Fine: | Maximum \$5,000,000 |
| 3) Supervised Release: | Mandatory minimum 4 years supervised release
Maximum lifetime supervised release |
| 4) Special Assessment: | \$100 |

Count 10 18 U.S.C. § 924(c)(1)(A)(I) - Possession of a Firearm During and in Relation to and in Furtherance of a Drug Trafficking Crime

- | | |
|------------------|--|
| 1) Imprisonment: | Mandatory minimum 5 years imprisonment
consecutive to any other term of imprisonment
Maximum life imprisonment |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the |

- | | |
|------------------------|---|
| | gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Counts 11-12 18 U.S.C. § 922(g) - Possession of a Firearm By A Prohibited Person

- | | |
|------------------------|----------------------------------|
| 1) Imprisonment: | Maximum imprisonment of 10 years |
| 2) Fine: | Maximum \$250,000 |
| 3) Supervised Release: | Maximum 3 years |
| 4) Special Assessment: | \$100 |

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☒ SUPERSEDING

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA
OFFENSE CHARGED

See attachment

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

 PENALTY:
 See attachment.

CR12

00723

EJD

PROCEEDING
 Name of Complainant Agency, or Person (& Title, if any)
 Federal Bureau of Investigation

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

 Name and Office of Person
 Furnishing Information on
 THIS FORM

MELINDA HAAG

☒ U.S. Att'y ☐ Other U.S. Agency

 Name of Asst. U.S. Att'y
 (if assigned)

Stephen Meyer, AUSA

DEFENDANT - U.S.

Victor Manuel Rodriguez

DISTRICT COURT NUMBER

DEFENDANT**IS NOT IN CUSTODY**

- 1) ☐ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☒ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges } ☒ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

 Has detainer
 been filed?

☐ Yes
☐ No

 If "Yes"
 give date
 filed

 DATE OF
 ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

 DATE TRANSFERRED
 TO U.S. CUSTODY

Month/Day/Year

☒ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☒ NO PROCESS*

☐ WARRANT Bail Amount:

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

42

ATTACHMENT TO PENALTY SHEET

Count 1 18 U.S.C. § 1962(d) — Racketeering Conspiracy

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum imprisonment of life |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Count 2 18 U.S.C. § 1959(a)(5) - Conspiracy to Commit Murder in Aid of Racketeering

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum imprisonment of 10 years |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 3 years |
| 4) Special Assessment: | \$100 |

Count 3 18 U.S.C. § 1959(a)(6) - Conspiracy to Commit Assault with a Dangerous Weapon in Aid of Racketeering

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum imprisonment of 3 years |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 3 years |
| 4) Special Assessment: | \$100 |

Count 4 18 U.S.C. § 1959(a)(1) - Murder in Aid of Racketeering

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum life imprisonment
Mandatory minimum life imprisonment |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Count 5 18 U.S.C. § 924(c)(1)(A)(I) - Possession of a Firearm During and in Relation to a Crime of Violence

- | | |
|------------------------|---|
| 1) Imprisonment: | Mandatory minimum 10 years imprisonment (as charged)
consecutive to any other term of imprisonment
Maximum life imprisonment |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the
gross pecuniary gain to the defendant; or (c) twice the gross
pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Count 6 18 U.S.C. § 924(j)(1) - Use/Possession of a Firearm in Furtherance of a Crime of Violence Resulting in Murder

- | | |
|------------------------|---|
| 1) Imprisonment: | Maximum life imprisonment |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the
gross pecuniary gain to the defendant; or (c) twice the gross
pecuniary loss inflicted on another |
| 3) Supervised Release: | Maximum 5 years |
| 4) Special Assessment: | \$100 |

Counts 7-9 21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Distribute and Possess with Intent to Distribute, and Distribution and Possession with Intent to Distribute, 5 Grams or More of Methamphetamine;

- | | |
|------------------------|---|
| 1) Imprisonment: | Mandatory minimum 5 years imprisonment
Maximum 40 years imprisonment |
| 2) Fine: | Maximum \$5,000,000 |
| 3) Supervised Release: | Mandatory minimum 4 years supervised release
Maximum lifetime supervised release |
| 4) Special Assessment: | \$100 |

Count 10 18 U.S.C. § 924(c)(1)(A)(I) - Possession of a Firearm During and in Relation to and in Furtherance of a Drug Trafficking Crime

- | | |
|------------------|--|
| 1) Imprisonment: | Mandatory minimum 5 years imprisonment
consecutive to any other term of imprisonment
Maximum life imprisonment |
| 2) Fine: | Maximum of the greater of: (a) \$250,000; (b) twice the |

- gross pecuniary gain to the defendant; or (c) twice the gross pecuniary loss inflicted on another
- 3) Supervised Release: Maximum 5 years
4) Special Assessment: \$100

Counts 11-12 18 U.S.C. § 922(g) - Possession of a Firearm By A Prohibited Person

- 1) Imprisonment: Maximum imprisonment of 10 years
2) Fine: Maximum \$250,000
3) Supervised Release: Maximum 3 years
4) Special Assessment: \$100